



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARE
ATTORNEY GENERAL**

November 29, 1965

**Honorable Homer Garrison, Jr.
Director
Texas Department of Public
Safety
Austin, Texas**

Opinion No. C-553

**Re: Various questions rela-
tive to court judgments
granting probation under
the provisions of Acts
59th Legislature, Chap-
ter 717, Section 2, page
1663.**

Dear Sir:

Your letter of September 2, 1965, requested an opinion of this department relative to revocation and/or suspension of driver's license under Section 22(a) of Article 6687b, Vernon's Civil Statutes, as amended by Senate Bill No. 498, Acts 59th Legislature, 1965, Chapter 717, which reads as follows:

"When under Section 10 of this Act the Director believes the licensee to be incapable of safely operating a motor vehicle, the Director may notify said licensee of such fact and summons him to appear for hearing as provided hereinafter. Such hearing shall be had not less than ten (10) days after notification to the licensee or operator under any of the provisions of this Section, and upon charges in writing a copy of which shall be given to said operator or licensee not less than ten (10) days before said hearing. For the purpose of hearing such cases jurisdiction is vested in the mayor of the city, or judge of the police court, or a justice of the peace in the county or subdivision thereof where the operator or licensee resides. Such court may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days' written notice to the Department. Upon such hearing, the issues to be determined are whether the license shall be suspended or whether the license shall be

revoked, and, in the event of a suspension, the length of time of the suspension, which shall not exceed one (1) year. The officer who presides at such hearing shall report the finding to the Department which shall have authority to suspend the license for the length of time reported; provided, however, that in the event of such affirmative finding, the licensee may appeal to the county court of the county wherein the hearing was held, said appeal to be tried de novo. Notice by registered mail to address shown on the license of licensee shall constitute service for the purpose of this Section.' (Emphasis added)"

Your letter sets forth examples of judgments which have been entered suspending an operator's license pursuant to Section 22(a) of Article 6687b, which have notations of "probation" or "judgment held in abeyance for 90 days" added at the end of the judgment.

In your request you have directed four questions to this department relative to the above as follows:

- (1) Whether or not the Department of Public Safety is required to honor the probation as ordered by the judge?
- (2) Who has the responsibility of determining whether or not the probationer has satisfied his period of probation?
- (3) Assuming the probationer has violated his probation should the Department at that time act to suspend the license period as set by the judge?
- (4) Assuming the probation ends satisfactorily should the judge inform the Department that no period of suspension is required by substituting a new judgment or order?

Article 6687b, Section 22(a), Revised Civil Statutes of Texas, as amended by Senate Bill No. 498, Acts 59th Legislature, 1965, Chapter 717, does not authorize probation of license suspension or revocation. Nor is any provision made in Vernon's Code of Criminal Procedure for the granting of probation in such cases. The other three questions are inapplicable as probation is unauthorized under the aforementioned article.

Honorable Homer Garrison, Jr., page 3 (C-553)

SUMMARY

Probation cannot be granted under Article 6687b, Section 22(a), Revised Civil Statutes of Texas, as amended by Senate Bill No. 498, Acts 59th Legislature, 1965, Chapter 717.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: 
THOMAS W. MACK

Assistant Attorney General

TWM/br

APPROVED:

OPINION COMMITTEE

W. O. Shultz, Chairman
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APPROVED FOR THE ATTORNEY GENERAL

By: T. B. Wright